

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA )  
4 ) Case No. 1:11CR203-1  
5 vs. ) Greensboro, North Carolina  
6 THOMAS MARSHALL BYRD, )  
7 ) June 1, 2012  
Defendant. )  
9:38 a.m.

8  
9 TRANSCRIPT OF CHANGE OF PLEA

10 BEFORE THE HONORABLE WILLIAM L. OSTEEEN, JR.

11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: MICHAEL DEFRANCO, AUSA  
14 Office of the U.S. Attorney  
15 101 S. Edgeworth Street, 4th Floor  
Greensboro, North Carolina 27401

16  
17 For the Defendant: TERESA DAWN STEWART, ESQUIRE  
18 Law Office of Teresa Stewart  
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20 Court Reporter: Joseph B. Armstrong, RMR, FCRR  
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23  
24 Proceedings reported by stenotype reporter.  
25 Transcript produced by Computer-Aided Transcription.

US v. Byrd - Change of Plea - June 1, 2012

1 Greensboro, North Carolina

2 June 1, 2012

3 (At 9:38 a.m., proceedings commenced.)

4 THE COURT: All right. Good morning,

5 Mr. DeFranco.

6 MR. DeFRANCO: Good morning, Your Honor.

7 THE COURT: You may proceed.

8 MR. DeFRANCO: Your Honor, the first matter is on  
9 for a change of plea, United States of America versus Thomas  
10 Marshall Byrd, 1:11CR203-1. The defendant is represented by  
11 Teresa Stewart, Your Honor.

12 THE COURT: Good morning, Ms. Stewart.

13 MS. STEWART: Good morning, Your Honor.

14 THE COURT: Are you and Mr. Byrd ready to proceed  
15 this morning?

16 MS. STEWART: Yes, Your Honor.

17 THE COURT: All right. I'm going to note at the  
18 outset I have looked at the plea agreement, Mr. DeFranco. I  
19 don't know what your position will be on this, but this  
20 indictment charges and the defendant will be pleading to a  
21 pre -- looks like a pre-Fair Sentencing Act offense.

22 MR. DeFRANCO: Yes, Your Honor.

23 THE COURT: And I previously held that the Fair  
24 Sentencing Act is not to be retroactively applied. I think  
25 different judges have held it different ways. So my

1 intention at this hearing would be to advise the defendant  
2 of the penalties as set forth in the plea agreement, which I  
3 think are the old penalties, not less than 10 or more than  
4 life as to Object One of Count One.

5 But presently pending now in the Supreme Court is  
6 *Dorsey* or one of the Seventh Circuit cases that's going to  
7 resolve that issue as to whether or not the Fair Sentencing  
8 Act statutory penalties are to be applied retroactively;  
9 and, ultimately, I certainly will apply what ever's held by  
10 the Supreme Court to Mr. Byrd's case. So if they say the  
11 penalties apply retroactively, then the lower statutory  
12 penalties that are set out in the Fair Sentencing Act would  
13 be applied to Mr. Byrd's case. If they hold that it does  
14 not, then the penalties I think -- the penalties I'll be  
15 advising Mr. Byrd of today will be the ones that will apply.

16 Any disagreement on that at this point?

17 MR. DeFRANCO: No, Your Honor.

18 MS. STEWART: No, Your Honor.

19 THE COURT: All right. Then in that case,  
20 Ms. Stewart, have you had enough time to review the  
21 Government's agency file?

22 MS. STEWART: Yes, Your Honor.

23 THE COURT: And do you believe Mr. Byrd  
24 understands the charges and the nature of this hearing?

25 MS. STEWART: Yes, Your Honor.

1           THE COURT: And is it his intention to enter a  
2 plea of guilty here this morning?

3           MS. STEWART: Yes, Your Honor.

4           THE COURT: Has anyone made any threats or  
5 promises to Mr. Byrd to induce his plea of guilty other than  
6 those contained in the plea agreement?

7           MS. STEWART: No.

8           THE COURT: And is it your recommendation that I  
9 accept his plea of guilty?

10          MS. STEWART: Yes, Your Honor.

11          THE COURT: Mr. Byrd, I'm going to ask Ms. Welch  
12 to administer the oath to you at this time.

13                 (Defendant sworn by the clerk.)

14          THE COURT: Mr. Byrd, you are now under oath; and  
15 because you're under oath, if you answer any of my questions  
16 falsely, those answers may later be used against you in a  
17 separate prosecution for perjury or making a false  
18 statement. Do you understand that?

19          THE DEFENDANT: Yes, sir.

20          THE COURT: Would you state your full name,  
21 please, sir?

22          THE DEFENDANT: Thomas Marshall Byrd.

23          THE COURT: And how old are you, Mr. Byrd?

24          THE DEFENDANT: Twenty-nine.

25          THE COURT: How far did you go in school?

1 THE DEFENDANT: Tenth grade.

2 THE COURT: And are you able to read and  
3 understand the indictment and the plea agreement in this  
4 case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And have you been treated recently for  
7 any mental illness or addiction to narcotic drugs?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you currently under the influence  
10 of any drug, medication, or alcoholic beverage of any kind?

11 THE DEFENDANT: No, sir.

12 THE COURT: And are you able to hear me and  
13 understand this proceeding?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you received a copy of the  
16 indictment and reviewed it with Ms. Stewart?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand the indictment and  
19 the charges against you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you fully discussed the  
22 charges contained in the indictment and the case in general  
23 with Ms. Stewart?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And have you and Ms. Stewart discussed

1 any possible defenses you might have to these charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you fully satisfied with the  
4 services of Ms. Stewart and her counsel, representation, and  
5 advice?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: In your case, Mr. Byrd, a written plea  
8 agreement has been filed that on page 7 appears to have the  
9 signature of Thomas Marshall Byrd. Is that your signature?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Stewart, as I understand  
12 Mr. Byrd's plea agreement, he is agreeing to enter a  
13 voluntary plea of guilty to the offenses charged in Object  
14 One of Count One and to Count Five of the indictment.

15 In exchange for his plea of guilty, the United  
16 States has agreed to not oppose a motion to dismiss any  
17 remaining counts at the time of sentencing.

18 The United States has agreed to recommend Mr. Byrd  
19 for a reduction in his offense level pursuant to Section  
20 3E1.1(b) of the sentencing guidelines if he otherwise  
21 qualifies.

22 And Mr. Byrd has further agreed that the substance  
23 involved in the offense alleged in Object One of Count One  
24 is 5 kilograms or more of a mixture and substance containing  
25 a detectable amount of cocaine base, or crack.

1           Finally, in exchange for the Government's  
2 agreement to not file an information of prior conviction in  
3 Mr. Byrd's case, he is waiving his right to appeal the  
4 conviction and sentence imposed and also to challenge the  
5 conviction and sentence in any post conviction proceeding  
6 except for the four exceptions that are listed in the plea  
7 agreement.

8           Is that your understanding of Mr. Byrd's plea  
9 agreement in this case?

10           MS. STEWART: Yes, Your Honor.

11           THE COURT: And does this plea agreement contain  
12 all the terms and conditions of Mr. Byrd's agreement with  
13 the United States?

14           MS. STEWART: Yes, Your Honor.

15           THE COURT: Mr. Byrd, is my summery of the plea  
16 agreement the same as your understanding of the terms of  
17 your plea?

18           THE DEFENDANT: Yes, sir.

19           THE COURT: And have you had enough time to review  
20 the plea agreement and discuss it with Ms. Stewart?

21           THE DEFENDANT: Yes, sir.

22           THE COURT: Do you understand all of the terms of  
23 your plea agreement?

24           THE DEFENDANT: Yes, sir.

25           THE COURT: Does this plea agreement represent the

1 entire agreement between you and the United States in this  
2 case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Byrd, the provisions of your plea  
5 agreement that I just mentioned, I do want to speak with you  
6 in a little more detail about those provisions.

7 First of all, you are stipulating or have  
8 stipulated with the United States that the substance  
9 involved in the offense charged in Object One of Count One  
10 of the plea agreement -- or excuse me -- of the Indictment  
11 is 5 kilograms or more of a mixture and substance containing  
12 a detectable amount of cocaine -- let's see -- cocaine base,  
13 or crack. The type and quantity of substance involved in  
14 the offense of conviction is a very significant factor in a  
15 case. It determines first the statutory penalties, both the  
16 mandatory minimum and maximum penalty that will apply upon  
17 conviction in this case; it is a significant factor in  
18 determining the advisory guideline calculation; and it can  
19 also be a factor in determining a sentence under 18 USC  
20 Section 3553. Do you understand all of that?

21 THE DEFENDANT: (No response.)

22 THE COURT: Let me back up first then, Mr. Byrd,  
23 and I'll go through it step-by-step. You are stipulating  
24 under the terms of this plea agreement, or agreeing with the  
25 United States under the terms of this plea agreement, that



1 the substance involved in the offense charged in Object One  
2 of Count One of this indictment is 5 kilograms or more of a  
3 mixture and substance containing a detectable amount of  
4 cocaine base, or crack. Do you understand that part so far?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, that stipulation that you have  
7 entered into is a stipulation. I'm going to go backwards.  
8 By entering into this stipulation, then at the time of  
9 sentencing I would not permit you or your attorney to argue  
10 or present evidence that the substance involved in Object  
11 One of Count One of the indictment is anything other than  
12 cocaine base, or crack, or is a quantity less than  
13 5 kilograms. Do you understand that?

14 THE DEFENDANT: (Nodding.)

15 THE COURT: Now, under the terms of that  
16 stipulation, that stipulation affects the statutory  
17 penalties that will apply in this case. In other words, by  
18 stipulating to 5 kilograms or more of a mixture and  
19 substance containing a detectable amount of cocaine base, or  
20 crack, the statutory penalties that will apply in this case  
21 include a sentence of not less than -- or include a sentence  
22 of not less than 10 years, that is, a mandatory minimum  
23 sentence of 10 years, or more than life in prison. Do you  
24 understand the effect of that stipulation on the statutory  
25 penalties? Do you understand what I'm saying?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The second thing that that stipulation  
3 will affect is the guideline calculation. The type and  
4 quantity of substance involved in the offense of conviction  
5 is a substantial factor in calculating the advisory  
6 guideline range. Do you understand that part so far?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, third, in determining a sentence,  
9 I am required to consider both the advisory guideline  
10 calculation as well as the factors set forth under 18 USC  
11 Section 3553. One of those factors set forth under that  
12 statute is the nature and circumstances of the offense. So  
13 under that statute, your stipulation as to the type and  
14 quantity of substance involved in the offense can be a  
15 factor that I may use -- I'm not saying I will, but may --  
16 use to determine a sentence that is sufficient but not  
17 greater than necessary. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about the  
20 stipulation you've entered into or its -- the effect of that  
21 stipulation on your case?

22 THE DEFENDANT: No, sir.

23 THE COURT: Now, second, Mr. Byrd, you are  
24 agreeing to waive your right to appeal; that is, in exchange  
25 for the Government not filing an enhancement to the sentence

1 that could be imposed, particularly in terms of a mandatory  
2 minimum sentence, you are agreeing to waive your right to  
3 appeal the conviction and sentence on any ground, and you  
4 are also agreeing to waive your right to challenge the  
5 conviction and sentence in any post conviction proceeding.

6 Do you understand your waiver of your right to  
7 appeal as well as your waiver of your right to challenge the  
8 conviction and sentence in any post conviction proceeding?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, you have reserved the right to  
11 challenge the conviction and sentence in an appeal or in any  
12 post conviction proceeding on four grounds only, and that  
13 is: Ineffective assistance of counsel; second,  
14 prosecutorial misconduct not known to you at the time of  
15 your guilty plea, which is today; third, a sentence in  
16 excess of the statutory maximum; and, four, a sentence based  
17 on an unconstitutional factor, such as race, religion,  
18 national origin, or gender.

19 Do you understand your reservation of those rights  
20 under the terms of your agreement, to waive your right to  
21 appeal, and to challenge the conviction and sentence in any  
22 post conviction proceeding?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Finally, Mr. Byrd, the United States  
25 has agreed under the terms of this plea agreement to make a

1 recommendation to the Court at the time of sentencing of a  
2 reduction in your offense level pursuant to Section 3E1.1(b)  
3 of the sentencing guidelines if you otherwise qualify for  
4 that reduction. However, that is only a recommendation, and  
5 it is not binding on this Court. Do you understand that I  
6 can refuse to follow the Government's recommendation in this  
7 case?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that this Court  
10 can impose a sentence that is more severe than you may  
11 anticipate based on that recommendation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that if I should  
14 choose not to follow the Government's recommendation, that  
15 fact alone is not a reason I would allow you to withdraw  
16 this guilty plea?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anyone made any threats or  
19 promises to you other than those contained in the plea  
20 agreement in an effort to get you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: And has anyone in any way attempted to  
23 force you to plead guilty against your wishes?

24 THE DEFENDANT: No, sir.

25 THE COURT: Now, in this case, Mr. Byrd, you are

1 pleading guilty to a felony offense. If your plea of guilty  
2 is accepted by this Court, you will be adjudicated guilty of  
3 that offense, and, as a result, you will lose certain  
4 valuable civil rights, including the right to vote, the  
5 right to serve on a jury, the right to possess any -- the  
6 right to hold public office, and the right to possess any  
7 type of firearm. Do you understand these consequences of  
8 your guilty plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, in this case before I accept your  
11 plea of guilty, Mr. Byrd, there are certain penalties that  
12 apply by statute that I am required to advise you of. In  
13 this case with respect to Object One of Count One of the  
14 indictment, based on the stipulation that you have entered  
15 into, that is, 5 kilograms or more of a mixture or substance  
16 containing a detectable amount of cocaine base or crack, the  
17 penalties that apply by statute include all of the  
18 following:

19 A mandatory minimum sentence of 10 years, and a  
20 maximum sentence of life imprisonment.

21 A fine of not more than \$4 million or twice the  
22 gross gain or loss resulting from the offense, whichever is  
23 greater.

24 A period of supervised release of not less than  
25 five years.

1           A special assessment of \$100 is mandatory.

2           Restitution and forfeiture may be ordered if  
3 applicable.

4           And I cannot place you on probation or suspend  
5 that sentence.

6           Do you understand those statutory penalties that  
7 apply upon conviction as to Count One -- Object One of  
8 Count One?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: Now, with respect to Count Five, which  
11 charges a violation of 18 USC Section 924(c), the applicable  
12 penalties that apply by statute include all of the  
13 following:

14          A mandatory minimum term of imprisonment of five  
15 years up to a maximum of life in prison.

16          A fine of not more than \$250,000 or twice the  
17 gross gain or loss resulting from the offense, whichever is  
18 greater.

19          A period of supervised release of not more than  
20 five years.

21          A special assessment of \$100 is mandatory.

22          Restitution and forfeiture may also be ordered.

23          And the sentence imposed as to Count Five must be  
24 imposed to run consecutively to any other sentence imposed  
25 in the case.

1           Do you understand those statutory penalties that  
2       apply as to Count Five?

3           THE DEFENDANT: Yes, sir.

4           THE COURT: Now, in advising you of these  
5       statutory penalties, I mentioned supervised release.  
6       Supervised release means that following any term of  
7       imprisonment you'll be placed on a period of supervision by  
8       this Court. During that time, if you violate any of the  
9       conditions of that supervised release, you may be given  
10      additional time in prison up to the full term of supervised  
11      release imposed. The Court could also impose an additional  
12      term of imprisonment and then reimpose supervised release in  
13      response to a violation.

14          Do you understand supervised release?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: Do you understand all of the possible  
17      penalties and consequences of this plea of guilty?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Now, up to this point, Mr. Byrd, I've  
20      advised you of the statutory penalties that could be imposed  
21      in your case. Ultimately, it will be up to this Court to  
22      determine a sentence which is sufficient but not greater  
23      than necessary. The process of determining that sentence  
24      starts by calculating an advisory sentencing guideline range  
25      based on sentencing guidelines created by the sentencing

1 commission. I cannot determine the sentencing guideline  
2 range applicable for your case until after a presentence  
3 report has been prepared. That report will contain a  
4 guideline calculation. Once that report is prepared, both  
5 you and the United States will have the opportunity to  
6 review that report and challenge the facts or the  
7 application of any guidelines as recommended by the  
8 Probation Office in that report.

9           Do you generally understand the process I've just  
10 described?

11           THE DEFENDANT: Yes, sir.

12           THE COURT: Now, Ms. Stewart may have discussed  
13 the guidelines with you, and she may have given you some  
14 estimate of what she thinks your sentencing guideline range  
15 might be or what your sentence might be. However, no one  
16 knows what that guideline range will be until after the  
17 Probation Office has calculated that guideline range in the  
18 presentence report, and I've had the opportunity to consider  
19 that calculation as well as any objections you or the United  
20 States might have.

21           As a result, do you understand that your guideline  
22 range and your sentence may be different from any estimate  
23 Ms. Stewart may have provided to you?

24           THE DEFENDANT: Yes, sir.

25           THE COURT: And do you understand that this Court



1 can use a guideline range or impose a sentence that is more  
2 severe than any estimated to you by your attorney?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, once your guideline range has  
5 been determined, it is an advisory sentencing guideline  
6 range. To determine a sentence, I am required to consider  
7 that advisory sentencing guideline range, any applicable  
8 departures to that range, and then all other factors set  
9 forth under 18 USC Section 3553.

10 Do you generally understand the process of  
11 determining a sentence?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, as a result of that process, do  
14 you also understand that this Court has the authority to  
15 impose a sentence that is more severe than that called for  
16 by the applicable sentencing guideline range?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand that if your  
19 sentence is more severe than that called for by the  
20 guidelines, that fact alone is not a reason I would allow  
21 you to withdraw this guilty plea?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand, Mr. Byrd, that  
24 parole has been abolished, and if you're sentenced to  
25 prison, you will not be released on parole?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: In this case, Mr. Byrd, because you've  
3 been charged with a felony, you have certain constitutional  
4 rights, and by pleading guilty you will waive many of these  
5 constitutional rights.

6           You have the right to plead not guilty to any or  
7 all charges.

8           You have the right to a trial by jury, which means  
9 you have the right to have your guilt or innocence  
10 determined by a jury.

11          At any trial, you are presumed innocent. The  
12 United States is required to prove your guilt of the crime  
13 charged beyond a reasonable doubt, which means the United  
14 States is required to prove each and every element of the  
15 crime charged beyond a reasonable doubt before you can be  
16 found guilty.

17          You have the right to the assistance of counsel at  
18 all stages of this proceeding -- at all stages of this  
19 proceeding, including a trial; and if you cannot afford an  
20 attorney, one will be appointed for you.

21          You have the right to see and hear all of the  
22 witnesses called to testify. You have the right to confront  
23 those witnesses, and you or your attorney has the right to  
24 cross-examine each of those witnesses.

25          You have the right to issue subpoenas and to

1 compel the attendance of witnesses to testify in your  
2 defense. If you cannot afford the cost of those subpoenas,  
3 the Government can be required to pay those costs for you.

4 You have the right to testify in your own defense  
5 if you choose to, but no one can force you to testify; that  
6 is, you have the right to refuse to testify. If you choose  
7 not to testify, your refusal to testify cannot be used  
8 against you in any way.

9 You have the right to present evidence, but you're  
10 not required to present any evidence at all. If you choose  
11 not to present any evidence at all, that fact cannot be used  
12 against you.

13 Do you understand each of these rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you further understand that by  
16 entering this plea of guilty, once your plea is accepted by  
17 this Court, there will be no trial, and you will have waived  
18 your right to a trial as well as these other rights  
19 associated with a trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, in this case, Mr. Byrd, as I  
22 mentioned earlier, you have been charged with and are  
23 seeking to enter a plea of guilty to Object One of Count One  
24 and to Count Five. The elements of the offense charged in  
25 Object One of Count One of the indictment, which charges a

1 violation of 21 USC Section 846, include all of the  
2 following:

3           One, there was an agreement between two or more  
4 persons that would undertake conduct that would constitute  
5 the offense charged in the indictment; that is, with respect  
6 to Object One, to knowingly and intentionally distribute a  
7 mixture and substance containing a detectable amount of  
8 cocaine base, crack, a controlled substance as charged in  
9 the indictment.

10           And, two, that you knew of that conspiracy.

11           And, three, that you knowingly and voluntarily  
12 became a member of that conspiracy.

13           Do you understand the elements of the offense  
14 charged in Object One of Count One?

15           THE DEFENDANT: Yes, sir.

16           THE COURT: Now, with respect to Count Five, which  
17 charges a violation of 18 USC Section 924(c)(1), the  
18 elements of that offense include all of the following:

19           One, that you committed a drug trafficking crime  
20 as alleged in the indictment.

21           And, two, during and in relation to the commission  
22 of that crime, or in furtherance of that crime, you  
23 knowingly possessed a firearm as charged in the indictment.

24           Do you understand the elements of the offense  
25 charged in Count Five?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: And do you further understand that by  
3 pleading guilty to these two offenses, you are admitting to  
4 the elements of the offenses as those facts are set out in  
5 the indictment?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: Do you have any questions about  
8 anything we've been over before I call upon you to enter  
9 your plea in this case?

10          THE DEFENDANT: No, sir.

11          THE COURT: Then in Case No. 1:11CR203-1, United  
12 States of America versus Thomas Marshall Byrd, how do you  
13 plead to the offense charged in Object One of Count One of  
14 the indictment?

15          THE DEFENDANT: Guilty.

16          THE COURT: And how do you plead to the offense  
17 charged in Count Five of the indictment?

18          THE DEFENDANT: Guilty.

19          THE COURT: And are you pleading guilty because  
20 you are, in fact, guilty?

21          THE DEFENDANT: Yeah.

22          THE COURT: I'm sorry, did you say yes?

23          THE DEFENDANT: Yes.

24          THE COURT: It is the finding of this Court in  
25 Case No. 1:11CR203-1 that Mr. Byrd is fully competent and

1 capable of entering an informed plea. The Court further  
2 finds that Mr. Byrd is aware of the nature of the charges  
3 and the consequences of his plea, and his plea of guilty is  
4 a knowing and voluntary plea.

5 Ms. Stewart, a written factual basis has been  
6 filed in Mr. Byrd's case. Have you received a copy of that  
7 and reviewed it with him?

8 MS. STEWART: Yes, Your Honor.

9 THE COURT: Are there any objections?

10 MS. STEWART: No, Your Honor.

11 THE COURT: Mr. Byrd, do you agree with that?  
12 First of all, have you reviewed the factual basis?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you generally agree with those  
15 facts?

16 THE DEFENDANT: Yes.

17 THE COURT: Then it is the finding of this Court  
18 Mr. Byrd's plea of guilty is supported by an independent  
19 basis in fact containing each of the essential elements of  
20 the offense. His plea is, therefore, accepted, and Mr. Byrd  
21 is now adjudged guilty of the offense charged in Object One  
22 of Count One and Count Five.

23 Mr. Byrd, as I mentioned earlier, a written  
24 presentence report will be prepared in your case. You will  
25 be asked to provide information for that report and to

1 submit to an interview. Ms. Stewart may be present with you  
2 and advise you at all stages of that process if you so  
3 desire.

4           Once that report is prepared, you will have the  
5 opportunity to review that report with Ms. Stewart and file  
6 any objections that you might have. If those objections are  
7 not resolved prior to sentencing, I will resolve those  
8 objections at the sentencing hearing.

9           Both you and Ms. Stewart will have the opportunity  
10 to speak on your behalf at the sentencing hearing.

11           I'll order the preparation of a presentence  
12 report, and sentencing is set for Tuesday, September 11,  
13 2012, at 2:00 p.m. in Greensboro, Courtroom 1.

14           Ms. Stewart, is there anything further on behalf  
15 of Mr. Byrd?

16           MS. STEWART: No, Your Honor.

17           THE COURT: All right. Thank you both.

18           DEFENSE ATTY: Thank you, Your Honor.

19                   (At 10:04 a.m., proceedings concluded.)  
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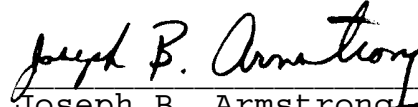
\* \* \* \* \*

C E R T I F I C A T E

I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States  
District Court Reporter for the Middle District of North  
Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of  
the proceedings had in the within-entitled action; that I  
reported the same in stenotype to the best of my ability;  
and thereafter reduced same to typewriting through the use  
of Computer-Aided Transcription.

Date: 01/02/13

  
\_\_\_\_\_  
Joseph B. Armstrong, RMR, FCRR  
United States Court Reporter  
324 W. Market Street  
Greensboro, NC 27401